



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
ENVIRONMENTAL REVIEW
AND ASSESSMENT

June 9, 2016

Jim Stobaugh, Project Manager
BLM, Gateway West Project
1387 S. Vinnell Way
Boise, Idaho 83709

Dear Mr. Stobaugh:

The U.S. Environmental Protection Agency has reviewed the Bureau of Land Management's March 2016 Draft Supplemental Environmental Impact Statement for Segments 8 and 9 of the Gateway West Transmission Line Project (EPA Project Number 08-035-BLM). We conducted our review in accordance with the EPA's responsibilities under the National Environmental Policy Act and Section 309 of the Clean Air Act. Section 309 specifically directs the EPA to review and comment in writing on the environmental impacts associated with all major federal actions. Our review of the DSEIS considers the expected environmental impacts of the proposed action and the adequacy of the EIS in meeting the purposes of NEPA.

Project Summary

The DSEIS evaluates the revised proposed action for Segments 8 and 9 of the ten segment Gateway West Transmission Line Project. The BLM has identified seven action alternatives, two of which have been selected by the BLM as Co-Preferred Alternatives. Granting of the Right of Way for the Revised Proposed Routes or other route alignments would require amendments to BLM Resource Management Plans and BLM Management Framework Plans. The DSEIS identifies significant impacts from construction and operations of the transmission line on historical resources (historic trails), visual quality, and cumulative impacts on several resources based on past and present levels of disturbance. A framework for compensatory mitigation is included in the DSEIS.

EPA Rating

We are rating the DSEIS "EC-2", Environmental Concerns - Insufficient Information. We have attached a copy of our rating system. Our primary environmental concerns relate to the project's adverse impacts on the Snake River Birds of Prey National Conservation Area, scenery, historic trails, cultural resources, wetlands, riparian areas, vegetation and wildlife habitat. We are also concerned about potential cumulative effects associated with reclassifying large areas of public lands and facilitating the creation of large utility corridors. The insufficient information rating relates to the DSEIS's:

- lack of a preliminary environmentally preferable alternative
- need for additional information relating to the premise that the No Action Alternative's impacts would be similar to the Action Alternative
- deficient proponent-proposed Mitigation and Enhancement Portfolio

- insufficient analysis of applying different Environmental Protection Measures across the landscape
- minimal status update on Clean Water Act Section 404 coordination with the U.S. Army Corps of Engineers

Our comments below include recommendations to address our concerns.

Agency and Environmentally Preferable Alternatives

In our December 2014 scoping comments, we recommended that the BLM identify both the preliminary agency and environmentally preferable alternatives for Segments 8 and 9 in the DSEIS. We appreciate that BLM, consistent with 43 CFR 46.425, has identified two agency Co-Preferred Alternatives. We also understand that, according to Council on Environmental Quality's implementing regulations for the NEPA as well as 43 CFR 46.450, the BLM is required to identify the environmentally preferable alternative(s) at the record of decision stage of the process. Our interest in preliminary identification of the environmentally preferable alternative is that it can help reviewers understand how the various environmental impacts are weighted. We do understand that identifying the environmentally preferable alternative can involve difficult judgements, since environmental values will need to be balanced against one another.

Given the need for deep understanding of the relative importance of different impacts identified in the SEIS, we recommend that the BLM identify the preliminary environmentally preferable alternative(s) in the Final SEIS. We suggest CEQ's ordinary definition for environmentally preferable, "Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources."¹

Impacts of the No Action Alternative

The DSEIS states that, "Under the No Action Alternative, impacts similar to those described below may occur due to new transmission lines that may be built to meet the increasing demand in place of this Project." This statement occurs throughout the DSEIS. We are concerned about this statement because, without sufficient justification or explanation, it has the effect of downplaying the consequences of the BLM's decision to grant, grant with conditions, or deny the Proponent's application. We agree that natural events will continue to occur, and that existing and planned developments will continue within the Analysis Area – such as wind farms, mining, agricultural and other land uses. We also agree that the region would have to turn to other proposals to meet transmission demand. However, it is not consistent with the purpose of the NEPA process to sharply define issues and give decision makers a basis for choice to suggest without specific supporting information or explanation that the No Action Alternative's impacts would be similar to the Action Alternatives' impacts. The DSEIS's analysis focuses on impacts to BLM lands, so, similar impacts would also occur on BLM lands. Such impacts would not occur without approval from the BLM and any subsequent approvals would be subject to their own environmental review processes.

We recommend that the SEIS further substantiate the general claim that the No Action Alternative's impacts would be similar to the Action Alternative or remove the claim. To the extent that known or

¹ Accessed online 6/9/16 at: <http://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>

reasonably foreseeable "other proposals" would similarly affect resources analyzed in the EIS, those reasonably foreseeable impacts can be disclosed along with specific supporting information and rationale. We note that natural events are unlikely to lead to similar impacts (e.g., visual), that wind farms and mining are unlikely to occur in the Snake River Birds of Prey National Conservation Area, and - importantly - that other proposals would be subject to their own analyses.

Mitigation and Enhancement Portfolio

The DSEIS's information on the Proponent-proposed Mitigation and Enhancement Portfolio and potential effects of the MEP within the Snake River Birds of Prey National Conservation Area is responsive to our scoping recommendation for the SEIS to address environmental impacts with consideration of mitigation enhancement proposals. We appreciate the BLM's substantial analysis of the potential effectiveness of the MEP as proposed.

The effectiveness of the Proponent's MEP is of central importance because it is a key component of ensuring that the project's impacts are adequately mitigated and ensuring compliance with the SRBOP's enabling statute. Congress established the SRBOP in relevant part "to provide for the conservation, protection, and enhancement of raptor populations and habitats and the natural and environmental resources and values associated therewith, and of the scientific, cultural, and educational resources and values of the public lands in the conservation area".²

Given that the MEP is a key component of demonstrating that the proposed ROW for the transmission line would meet the SRBOP's establish purposes, and enhance SRBOP resources and values, we have serious concerns about some aspects of the MEP as proposed. Aspects that cause concern include:

- Unknown make-up of the Oversight Committee that selects private inholdings to purchase to compensate for visual impacts (for example). According to the DSEIS, "...the effectiveness of the Oversight Committee cannot be determined until the individuals and agencies that will be include in the committee are identified."³
- The MEP's proposal to "...permanently reduce illegal behaviors..."⁴ that may damage resources by funding increased law enforcement within the SRBOP for a period of 10 years. The concern is that 10 years is neither permanent nor lasts the life of the project.
- Exact visitor enhancement programs are not identified, so a determination of the proposal's ability to enhance the objectives and the values for which the SRBOP was established cannot be made.⁵
- Insufficient information with regard to the MEP's goal to return treated areas to baseline conditions. Natural Resource Conservation Service Ecological Site Descriptions (baseline conditions) have not been defined for 38 percent of Segment 8 and 12 percent of Segment 9.⁶ Site descriptions for these unidentified areas need to be established in order to determine baseline conditions and define restoration goals.
- Insufficient definitions associated with mitigation ratios for habitat restoration. According to the DSEIS, "More information would be required from the Proponents in order to fully assess what

² Section 3(a)(2) of P.L. 103-64 [1993]

³ DSEIS, p. 3.2-76

⁴ DSEIS, p. 3.2-77

⁵ DSEIS, p. 3.2-78

⁶ DSEIS, p. 3.3-46

areas the Proponents are considering “presently undisturbed ecological sites” or “presently disturbed ecological sites”. Without additional information, it is not possible for agencies to fully assess what areas the Proponent would apply their various mitigation ratios to. Based on this, and other factors, BLM concludes that the proposed habitat restoration plan, “...cannot be considered a complete proposal and the success or validity of the Proponent’s plan cannot be accurately assessed.”⁷

In addition to usefully disclosing the above and other deficiencies with the Proponent’s MEP, the DSEIS provides associated recommendations. The EPA supports the BLM’s concerns about the Proponent Proposed MEP and recommends that the Final SEIS include information detailing the responsiveness of the Proponent’s efforts to update the MEP. To the extent that the BLM’s mitigation framework is intended to address gaps identified in the MEP, we recommend that the Final SEIS describe specifically how the BLM mitigation framework addresses those gaps.

Environmental Protection Measures

In our 2014 December scoping comments we recommended consistent application of Environmental Protection Measures on federal and non-federal lands. Recognizing that BLM cannot require EPMs on non-federal lands, we recommended that the DSEIS analyze the implications for different environmental impacts where EPMs only apply to federal, and/or state lands. The DSEIS does not sufficiently describe or disclose the implications of inconsistent EPM application across ownerships. The EPA cannot fully assess environmental impacts to wetlands, riparian areas, water quality, sensitive plants, wildlife, and vegetation on private lands because the implications of fewer related EPMs on private lands are not disclosed.

We recommend that the Final SEIS include a discussion of the implications for related resources of not applying the following EPMs to state or private lands.

- WQA-25: installing culverts with slopes that do not exceed the stream gradient and that maintain streambed material in the culvert help to ensure passage for aquatic organisms.
- WET-1: following INFISH buffers, or larger, for avoiding impacts to wetland and riparian areas would help to ensure that impacts to aquatic resources are adequately minimized - a key component of ensuring compliance with Clean Water Act Section 404(b)(1). Section 404 applies across land ownerships.
- TESWL 1, 4-10, 14 and 15: These measures protect threatened and endangered wildlife species, such as grouse species, yet only apply to federal lands while Segments 8 and 9 of the project would cross between 32.7 and 64.1 miles of private land - as well as many more miles in the other eight segments. We are concerned that the DSEIS, and prior Gateway West EISs, do not sufficiently describe or disclose how the project would lead to impacts on wildlife in different ways on public and private land.
- OM-22, OM-26, VEG-8, selected TESPL EPMs, and WILD-10: All of these EPMs present similar analytical insufficiencies. The DSEIS does not address the implications of inconsistent application of these EPMs’ protections for sensitive plants and wildlife, noxious weeds, threatened and endangered plants, and snag habitat.

⁷ DSEIS, p. 3.6-27

Wetlands and Riparian Areas

Our December 2014 scoping comments included several recommendations relating to Section 404 of the Clean Water Act. We recommended: discussion of who would manage the In-Lieu Fee for aquatic resource compensatory mitigation; rationale for why ILF is an appropriate approach; and a status update on coordination efforts with the U.S. Army Corps of Engineers. Upon further review, we note that FEIS Appendix C-2 is generally responsive to our first two recommendations. According to FEIS Appendix C-2, mitigation banks are unlikely to work for this project, and there are few ILFs in the project area. While these challenges are meaningful, we recognize that the Proponent's proposed framework for aquatic resource compensatory mitigation is justified with relevant rationale in Section 5.2 of the FEIS's Appendix C-2. We concur that likelihood of long-term success, and opportunities to provide for increased functions are appropriate considerations.

With regard to our recommendation for a Corps coordination status update, the DSEIS is minimally responsive because it only includes a statement that coordination has occurred for the FEIS segments and that compensatory mitigation for Segments 8 and 9 "...would be determined during subsequent coordination efforts with USACE."⁸ Because the FEIS Appendix C-2 identifies meaningful challenges for adequate compensatory mitigation - lack of existing mitigations banks and ILFs; and, the DSEIS provides a minimal status update, we recommend that the Final SEIS include related updates or - to the extent possible - a fully updated Framework for Compensatory Mitigation for and Monitoring of Unavoidable Impacts to Waters of the U.S.

Thank you for this opportunity to comment. If you have any questions regarding the EPA's comments, please contact me at (206)-553-1601 or littleton.christine@epa.gov or Erik Peterson at (206) 553-6382 or peterson.erik@epa.gov.

Sincerely,



Christine Littleton, Manager
Environmental Review and Sediment Management Unit

Enclosure:

1. U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements

⁸ DSEIS, p. 3.9-7